IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/09/2004

C O R A M

THE HONOURABLE Mr.JUSTICE A.K.RAJAN

W.P.No. 7687 of 2001

New Woodlands Hotel Private Ltd.
rep by Managing Director
72/75, Dr. Radhakrishnan Salai
Chennai 4. ... Petitioner

-Vs-

1. The Presiding Officer
First Additional Labour Court
Chennai.

2. Angamuthu Chandran
32, North Mada Street
Chenai 4. ... Respondents.

Writ petition filed under Article 226 of the Constitution of
India praying for issuance of a Writ of Certiorari as stated therein.

!For Petitioner ... Mr. R.Parthiban

^For R.2 ... Ms. K. Sumathi

:O R D E R
The prayer in the writ petition is to issue a Writ of
Certiorari, calling for the records of the first respondent in I.D.No.563/94,
dated 18.10.2000, and quash the same.

2. The petitioner is the hotel. According to the petitioner,
the second respondent/employee was temporarily employed as Cook in the year
1982. The second respondent was made permanent in the year 1987 and
thereafter, on 10.1.1991 he wanted to go to Dubai for better prospects and
hence his outstandings were settled by the writ petitioner, and thereafter the
second respondent left for Dubai. The second respondent, after serving three
years, returned back to India and wanted to serve again under the petitioner.
When employment was not given by the writ petitioner, the second respondent
moved the Labour Court as if he was sent to Dubai by the writ petitioner, and
therefore he wanted re-employment in the same hotel. This was not acceded.
Hence, an industrial dispute was raised; ultimately, it resulted in the award.
The Labour Court passed an award directing reinstatement of the second
respondent with back-wages. Challenging that, the present writ petition.

3. Mr. Parthiban, learned counsel for the petitioner, submits that the second respondent voluntarily resigned from service and to that effect documents have been signed by him and all the outstandings due to him has also been settled. Thereafter he went to Dubai to seek employment. The second respondent was working in Dubai Woodlands Hotel and the petitioner has nothing to do with the Hotel at Dubai and therefore he was not in his employment. Hence, the award of the Labour Court is not legally sustainable and it is rightly to be rejected.

4. Ms. K.Sumathi, learned counsel for the second respondent, submits that the second respondent was a poor cook working in the petitioner/hotel and even immediately after his appointment, he was sent to Singapore and worked there from 1985. Immediately after return from Singapore on 20.6.1987, the second respondent was made permanent by the writ petitioner. If the hotel at Singapore is not their Branch, the second respondent/employee would not have been made permanent on his return from Singapore. Further, the learned counsel for the second respondent states that in the year 1991 the second respondent was asked to go to Dubai; visa was processed only by the petitioner/ management and for the purpose of processing the visa, he has signed in some papers. That papers have been converted, as if, the amount has been settled and he voluntarily resigned. The learned counsel for the second respondent further submits that he never resigned, but he was sent to work in Dubai in their own branch.

5. The Labour Court has considered the fact as to whether the hotel at Dubai is a Branch of the writ petitioner or not, and found that it is the branch of the writ petitioner. That is the question of fact and it cannot be interfered with. Further, the Labour Court has found that there was non-employment of the petitioner, and this also the question of fact.

6. The only question arises before this Court is whether the petitioner has resigned his job on 10.1.1991 voluntarily or not. Strangely, a Promissory Note, alleged to have been executed by the employee in favour of M/s. New Woodlands Hotels Pvt. Ltd. on 26.1.2001, has been filed by the petitioner voluntarily before the Labour Court. By this Promissory Note, a sum of Rs.14,500/- has been given to the second respondent/employee. But, no steps have been taken thereafter. It is not known as to how and what circumstances the amount was sought for by the second respondent. The learned counsel for the petitioner tries to explain that - Out of humanitarian consideration, when its former employee sought some financial assistance to go to Dubai, it was given to him by way of Promissory Note. But, no attempts have been made to recover the amount. Therefore, at the time of sending him to Dubai, probably, the Promissory Note has been executed as security.

7. For all these reasons, it is found that the second respondent/ employee was only under the services of the writ petitioner.

8. Having the Labour Court found that the petitioner was an employer and the second respondent was an employee, there is no illegality in this conclusion. There is no perversity in the award of the Labour Court.

Therefore, this Court cannot interfere with the award of the Labour Court. Hence it is confirmed. So far as back-wages is concerned, it is restricted to 75%.

9. In the result, the writ petition is dismissed. No costs.
Index: Yes
Internet: Yes

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To

The Presiding Officer
First Additional Labour Court
Chennai.